

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

CLARK DECAMP,

Plaintiff,

vs.

PROGRESSIVE PREFERRED INSURANCE
COMPANY,

Defendant.

CIV. #20- 4138

**COMPLAINT AND DEMAND
FOR TRIAL BY JURY**

COMES NOW the Plaintiff, Clark DeCamp, and for his Complaint against the above-named Defendant, states and alleges as follows:

NATURE OF THE ACTION

This is a breach of contract action brought by Plaintiff Clark DeCamp (“Plaintiff”) against Defendant Progressive Preferred Insurance Company (“Defendant”). Plaintiff was injured in an automobile collision that occurred on July 4, 2019 in the State of South Dakota. He seeks to be made whole pursuant to the benefits available to him as an insured under the policy with Defendant.

PARTIES

1.

Plaintiff Clark DeCamp (hereinafter “Plaintiff”) is a resident of the State of Minnesota.

2.

Upon information and belief, Defendant Progressive Preferred Insurance Company (hereinafter “Defendant”) is an insurance company duly organized and existing under the laws of the State of Ohio, with its principal place of business in the State of Ohio, which at all relevant

times was duly authorized to issue insurance policies in the States of Minnesota and South Dakota. At all times relevant to this action, Defendant provided automobile insurance coverage to Plaintiff. Defendant issued an insurance policy to its insured, Clark DeCamp, with Policy No. 46777297, which provided him underinsured motorist benefits.

JURISDICTION AND VENUE

3.

Plaintiff invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1332 based upon the diversity of the parties. The amount in controversy exceeds the sum of \$75,000.00.

4.

A substantial part of the events giving rise to this action occurred in South Dakota, and thus venue is proper in this Court pursuant to 28 U.S.C. § 1391(b)(2).

FACTS

5.

On or about July 4, 2019, Plaintiff was traveling southbound in his vehicle on US Highway 85 in the State of South Dakota.

6.

At the same time, the underinsured motorist was also traveling southbound on US Highway 85 in the State of South Dakota and was traveling behind Plaintiff's vehicle. The underinsured motorist failed to slow down and collided into the rear of the trailer attached to Plaintiff's vehicle.

7.

The underinsured motorist received citations for careless driving, open container in vehicle, underage consumption of alcohol, and driving under the influence as a result of the collision.

8.

As a direct and proximate result of the collision, Plaintiff sustained injuries and damages, including, but not limited to, personal injuries which required medical treatment. Additionally, he has experienced pain and suffering, permanent impairment and disability, loss of enjoyment of the capacity of life, loss of past and future earned wages, past and future medical costs and expenses, and other general and special damages.

9.

The collision and the resulting injuries to Plaintiff were proximately caused by the negligence of the underinsured motorist in several respects including, but not limited to:

- (a) Driving carelessly;
- (b) Driving under the influence of alcohol and/or drugs;
- (c) Exceeding the posted speed limit;
- (d) Failing to keep his vehicle under control;
- (e) Failing to keep a proper lookout for other vehicles; and
- (f) Otherwise generally failing to operate the vehicle in a safe and prudent manner.

10.

At the time of the collision on July 4, 2019, Plaintiff was insured under a policy of automobile insurance issued by Defendant. As part of said policy issued by Defendant, Plaintiff paid a separate premium to purchase underinsured motorist coverage in the amount of \$100,000 per accident.

11.

Plaintiff requested permission from Defendant's claim representative to accept the liability settlement of \$100,000.00 from the liability carrier for the underinsured motorist. Plaintiff advised Defendant's representative of his intent to pursue a claim for his underinsured motorist benefits against Defendant.

12.

Defendant's representative responded on behalf of Defendant and gave Plaintiff permission to accept the liability limits of \$100,000.00 from the liability carrier for the underinsured motorist.

13.

Since then, Plaintiff has made a demand on Defendant for the underinsured motorist benefits available to him. The Defendant made no offer to Plaintiff to resolve his underinsured motorist claim and informed Plaintiff that Defendant believes Plaintiff was fully compensated by the liability settlement.

14.

The motor vehicle collision arising out of this action occurred in the State of South Dakota.

15.

Upon information and belief, the Defendant has not interviewed any of the Plaintiff's medical providers regarding his injuries or medical conditions.

16.

The Defendant has not sought interviews with the Plaintiff regarding his injuries or medical conditions.

COUNT I
Declaratory Relief

17.

Plaintiff hereby realleges paragraphs 1 through 16 and incorporates them as if fully set forth herein.

18.

A justifiable controversy exists between and among the parties who are entitled to relief under SDCL Chapter 21-24, and this Court is authorized to determine the rights, responsibilities and liabilities of each of the parties for the controversy now existing regarding past, present, and future coverage.

19.

Specifically, this Court is authorized to determine whether Defendant is to provide and specifically the amount owed of underinsured motorist benefits to Plaintiff arising out of the July 4, 2019 motor vehicle collision.

20.

Plaintiff is entitled to benefits under the underinsured motorist portion of the Defendant's automobile policy previously referred to in an amount as the jury deems just and proper for all damages sustained in the July 4, 2019 collision and accordingly seeks a declaration: (1) that Defendant is to provide underinsured coverage for all claims and liabilities to Plaintiff arising out of the motor vehicle collision that occurred on or about July 4, 2019 under the policy it sold to the Plaintiff; (2) that the full limits of underinsured motorist coverage in the policy that the Defendant sold to the Plaintiff is available to compensate him for his injuries; and (3) the amount owed of underinsured motorist benefits to Plaintiff arising out of the July 4, 2019 motor vehicle collision.

COUNT II
Breach of Contract

21.

Plaintiff hereby realleges paragraphs 1 through 20 of this Complaint and incorporates them as if fully set forth herein.

22.

By virtue of its Policy of insurance in effect on July 4, 2019, and the Plaintiff's status as an insured under the Policy, the Defendant is contractually obligated to pay the Plaintiff's insurance benefits as a result of the automobile collision caused by the tortfeasor that occurred on July 4, 2019.

23.

The Defendant breached its duty to pay the Plaintiff's insurance benefits pursuant to the Policy.

24.

Because of the Defendant's breach of its duties under the Policy, Plaintiff has suffered damages including, but not limited to, the benefits Plaintiff is owed under the terms of the Policy.

WHEREFORE, Plaintiff prays for judgment against the Defendant as follows:

1. For the Court to find and declare: (a) that Defendant is to provide underinsured coverage for all claims and liabilities to Plaintiff arising out of the motor vehicle collision that occurred on or about July 4, 2019 under the policy it sold to the Plaintiff; (b) that the full limits of underinsured motorist coverage in the policy that the Defendant sold to the Plaintiff are available to compensate him for his injuries; and (c) the amount owed of underinsured motorist benefits to Plaintiff arising out of the July 4, 2019 motor vehicle collision;

2. For Plaintiff's underinsured motorist benefits due and owing under the policy, including, but not limited to, special damages, general damages, and pain and suffering;
3. For prejudgment and post-judgment interest;
4. For Plaintiff's costs, disbursements, and attorney fees pursuant to applicable statute; and
5. For any other and further relief the Courts deems just and proper under the circumstances.

Dated this 24th day of September, 2020.

**JOHNSON, JANKLOW, ABDALLAH &
REITER, LLP**

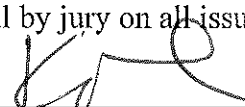
BY 

A. Russell Janklow (russ@janklowabdallah.com)
Kimberly J. Lanham (kim@janklowabdallah.com)
Post Office Box 2348
Sioux Falls, SD 57101
Phone: 605-338-4304
Fax: 605-338-4162

Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff hereby respectfully demands trial by jury on all issues so triable.



A. Russell Janklow
Kimberly J. Lanham

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Clark DeCamp
29659 610th Avenue, Chokio, MN 56221

(b) County of Residence of First Listed Plaintiff Stevens
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, address, and Telephone Number)
Johnson, Janklow, Abdallah & Reiter, LLP
P.O. Box 2348, Sioux Falls, SD 57101
(605) 338-4304

DEFENDANTS

Progressive Preferred Insurance Company
P.O. Box 89490, Cleveland, OH 44101-6490

County of Residence of First Listed Defendant Cuyahoga
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|---------------------------------------|---|----------------------------|---------------------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input checked="" type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input checked="" type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input checked="" type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit (15 USC 1681 or 1692) <input type="checkbox"/> 485 Telephone Consumer Protection Act <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	LABOR <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation - Transfer
☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28 U.S.C. Section 1332

Brief description of cause:
motor vehicle accident

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

Excluded \$75,000

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

DATE

9/24/2020

SIGNATURE OF ATTORNEY OF RECORD

[Signature]

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE